

§ 4-122. Funding for education of children in out-of-county living arrangements.

(a) Definitions.-

- (1) In this section the following words have the meanings indicated.
- (2) "Child in an out-of-county living arrangement" means a child who is placed by a State agency, a licensed child placement agency as provided by § 5-507 of the Family Law Article, or a court in a county other than where the child's parent or legal guardian resides. "Child in an out-of-county living arrangement" does not include a child living with a relative, stepparent or a person exercising temporary care, custody or control over a child at the request of a parent or guardian of the child.
- (3) "Financially responsible county" means the county where the parent or legal guardian of a child in an out-of-county living arrangement resides. If the parents of the child live apart, the financially responsible county is:
 - (i) The county where the parent who has been awarded custody of the child resides;
 - (ii) If custody has not been awarded, the county where the parent with whom the child lives when not in a foster care home or residential facility resides;
 - (iii) If custody has been awarded to both parents and the parents reside in different counties, both counties shall be considered financially responsible and shall pay one-half the amount as computed in accordance with subsection (c) of this section, except that if the child receives a public education in a county where a parent resides, this subparagraph shall not apply; or
 - (iv) If custody has been awarded to both parents and one parent resides in a county and the other resides out-of-state, the county shall be considered the financially responsible county.
- (4) "Local current expense per student" means all expenditures made by a county from county appropriations, except State, federal, and other aid, for public elementary and secondary education in the prior fiscal year, divided by the full-time equivalent enrollment, as defined in § 5-202(a) of this article.
- (5) "Service providing local education agency" means the local education agency for the county where a child in an out-of-county living arrangement is placed.

(b) Right of child to receive education.-

- (1) A child in an out-of-county living arrangement shall receive an appropriate education from the service providing local education agency.
- (2) The service providing local education agency shall include a child enrolled as the result of an out-of-county living arrangement in their full-time equivalent enrollment as provided by § 5-202(a)(6) of this article.

(c) *Payments by counties.* -

(1) Except as provided in paragraph (4) of this subsection, for each child in an out-of-county living arrangement enrolled in a public school program on December 31, the financially responsible county shall pay the service providing local education agency an amount equal to the lesser of:

- (i) The local current expense per student in the financially responsible county; or
- (ii) The local current expense per student in the service providing local education agency.

(2) If the service providing local education agency determines that a child in an out-of-county living arrangement is handicapped and needs public school Intensity IV or V Special Education Services, the financially responsible county shall pay the service providing local education agency for each such child an amount equal to the lesser of:

- (i) Three times the local current expense per student in the financially responsible county; or
- (ii) ~~Three times the local current expense per student in the service providing local education agency.~~

(3) (i) If the local current expense per student in the financially responsible county is less than the local current expense per student in the service providing local education agency, the State shall pay to the service providing local education agency the difference for each student in an out-of-county living arrangement who attends a public school in the service providing local education agency.

(ii) The necessary funds shall be provided in the appropriation to the State Board.

(4) If the service providing local education agency determines that a child in an out-of-county living arrangement is handicapped and needs a nonpublic educational program as provided by § 8-406 of this article, the financially responsible county shall pay for each such child the amount provided by § 8-415(d)(3) of this article.

(d) *Notice and determination; appeals; computation of local current expense; failure of county to make payment.* -

(1) Each service providing local education agency shall notify the State Superintendent of the name of each child in an out-of-county living arrangement as of December 31 of each year and make a preliminary determination of the financially responsible county for each child. The service providing local education agency shall send a copy of this notice to the financially responsible county by January 31, and at the same time shall send the notice to the State Superintendent.

(2) The county which was initially determined to be financially responsible may appeal that determination to the State Superintendent within 30 days of the date on which the notice was mailed.

(3) The State Superintendent shall decide all appeals which are made under paragraph (2) of this subsection, and make a final determination regarding the financially responsible county for each child in an out-of-county living arrangement.

(4) By January 15 of each year each county board shall provide the State Superintendent the data necessary to compute the local current expense per student under this section.

(5) If by May 15 a financially responsible county fails to make the required payment to a service providing local education agency, the State Superintendent shall deduct from the next payment of State aid to the financially responsible county an amount equal to the amount owed under this paragraph and shall pay those funds to the service providing local education agency.

(e) *Liability of out-of-state agencies.* -

(1) Except as provided in paragraph (2) of this subsection, out-of-state agencies that place a child in a foster care home or residential facility in Maryland shall be liable for the costs of the child's education, including transportation.

(2) The provisions of paragraph (1) of this subsection do not apply to out-of-state agencies that place a child for adoption.

(f) *Regulations.* - The State Board may adopt regulations which implement this section.

[1986, ch. 123; 1996, ch. 10, § 16; ch. 252; 1998, ch. 21, § 1; 2000, ch. 61, § 1; 2002, ch. 19, § 9; 2003, ch. 21, § 7; ch. 113; 2005, ch. 25, § 1; 2006, ch. 44.]